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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/810,908	03/29/2004	Lynn A. Buckner		9423	
7590	11/20/2009		EXAMINER		
LYNN A. BUCKNER PO Box 609 Chickamauga, GA 30707		BEACH, THOMAS A			
		ART UNIT	PAPER NUMBER	3671	
		MAIL DATE	DELIVERY MODE	11/20/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/810,908	BUCKNER, LYNN A.
	Examiner	Art Unit
	THOMAS A. BEACH	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 June 2009.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 10-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 10-18 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to properly claim step(s) in a method claim. The claims fail to properly claim step(s) *for performing a function*, instead appear to be a listing of apparatus elements where "steps of:" is not proper.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Atzberger 5,140,759.

As concern claim 15, Atzberger shows a vacuum boring and mud recovery vacuum hose attachment method, comprising the steps of providing a vacuum conduit having a vacuum source attached to a first end, a second end being a suction end of the vacuum conduit, the first end having a first circumference and the second end

having an inward rolled edge with a second circumference smaller than the first circumference (figs 1-3).

As concern claim 16, Atzberger shows a vacuum boring and mud recovery vacuum hose attachment method, comprising the steps of providing a vacuum conduit having a vacuum source attached to a first end, a second end being a suction end of the vacuum conduit, a spray nozzle hose connected to an aerodynamic support and a spray nozzle within the second end (figs 1-3).

As concern claim 18, Atzberger shows the steps of: mounting the aerodynamic support within the bell portion and the aerodynamic support supporting the spray nozzle adjacent to the open end of the vacuum conduit bell (figs 1-3).

5. Claims 10-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gilman et al 6,470,605. Gilman shows a hydro vacuum excavation method having a vacuum container C, a means to create a vacuum environment within said vacuum container, a water pump (fig 1-2), a water conduit a water spray nozzle 82 (fig 5), a vacuum conduit 60 having a first end placed in communication with said vacuum container and a second end of said vacuum conduit being the suction inlet end for vacuuming earthen material (fig 4-5), and a means to restrict said second end suction inlet of said vacuum conduit so as to clog said second end suction inlet of said vacuum conduit with earthen material which may be large enough to get lodged in said vacuum conduit and said suction inlet end of said vacuum conduit having a circumference wall 66 (fig 4-5), and further comprising the step of said means to restrict said suction inlet

end of said vacuum conduit being formed by the shape of said vacuum conduit suction inlet end circumference wall and further comprising the step of adjacently attaching said liquid spray nozzle 82 to the exterior of said circumference wall (fig 5) and further comprising the step of said formed shape means to restrict said suction inlet end of said vacuum conduit being the location of adjacently attaching said liquid spray nozzle to said exterior of said circumference wall of said vacuum conduit second end, whereby said liquid spray nozzle is positioned so as to spray water on earthen material that is placed adjacent to said suction inlet of said vacuum conduit (fig 5).

As concern claim 11, Gilman shows the steps of having the vacuum conduit with a first circumference and the suction end of the vacuum conduit having a bell shaped portion having a second circumference larger than the first circumference (fig 5), the bell shaped portion having the one or more indentation and having one or more water spray nozzles 82 (fig 4).

As concern claim 12, Gilman shows the steps of: the spray nozzle being selected from one of a pulse jet, a rotary jet, a jetter nozzle and a fixed spray jet 82.

As concern claim 13, Gilman shows the steps of facing the spray nozzle housed within the indentation so as to spray towards the center of an area to be vacuumed (figs 4-5).

As concern claim 14, Gilman shows the steps of: providing a second and third spray nozzle 82 housed within a second and third indentation on the vacuum conduit (figs 4-5).

As concern claim 15, Gilman shows a vacuum boring and mud recovery vacuum hose attachment method, comprising the steps of providing a vacuum conduit having a vacuum source attached to a first end, a second end being a suction end of the vacuum conduit, the first end having a first circumference and the second end having an inward rolled edge with a second circumference smaller than the first circumference (figs 1-5).

As concern claim 16, Gilman shows a vacuum boring and mud recovery vacuum hose attachment method, comprising the steps of providing a vacuum conduit having a vacuum source attached to a first end, a second end being a suction end of the vacuum conduit, a spray nozzle hose connected to an aerodynamic support and a spray nozzle within the second end (figs 1-5).

As concern claim 17, Gilman shows the steps of: providing the vacuum conduit with a first circumference and a vacuum conduit bell shaped portion having a second circumference larger than the first circumference and having an indentation in the circumference of the conduit bell, and having a water spray nozzle positioned within the indentation, and the water spray nozzle directed so as to emulsify dirt located at the suction end of the vacuum conduit (figs 1-5).

As concern claim 18, Gilman shows the steps of: mounting the aerodynamic support within the bell portion and the aerodynamic support supporting the spray nozzle adjacent to the open end of the vacuum conduit bell (figs 1-5).

Response to Arguments

6. Applicant's arguments filed 06/26/09 have been fully considered but they are not persuasive and moot in view of the new grounds of rejection above. Claims 15-16 & 18 are still rejected since these claims do not require a water spray nozzle and Atzberger shows the elements of these claims in which an air jet would still be proper to reject these claims. Applicant's request for constructive assistance is noted; however, the Examiner is not able to delineate patentable subject matter in this application. See references US 5140759 A, US 5901478 A, US 2599980 A, & US 3638741 A which all show the elements of the disclosed invention either separately or in combination with one another and including Gilman.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Thomas A. Beach

/Thomas A Beach/
Primary Examiner, Art Unit 3671

November 19, 2009

**THOMAS A. BEACH
Primary Examiner
Group 3600**